

**FILED**

OCT 17 2016

SECRETARY, BOARD OF  
OIL, GAS & MINING

**BEFORE THE BOARD OF OIL, GAS AND MINING  
DEPARTMENT OF NATURAL RESOURCES  
STATE OF UTAH**

<div>In the matter of: Realeza del Spear Trabajo del Spear Gulf Coast Oil &amp; Gas Company, Sun-West Oil &amp; Gas, Sun-West Oil &amp; Gas, Inc.;</div> <div>Petitioners v. Craig Phillips, individually and dba Uinta Oil &amp; Gas, Mountain Oil Inc., and Homeland Gas &amp; Oil, Inc.;</div> <div>Respondents</div>	<div><b>Findings of Fact, Conclusions of Law and Order</b></div> <div>Docket Nos.: 131-143, and 131-144</div> <div>Cause Nos.: 2016-007, and 2016-008</div>
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The foregoing matter came before the Board of Oil, Gas and Mining (Board) for hearing on August 24, 2016 at 10:00 a.m. in the auditorium of the Utah Department of Natural Resources Building, 1954 West North Temple, Salt Lake City, Utah to determine if the Petitioners' claims should be set for formal hearing pursuant to Utah Code § 40-6-9(6). The following members of the Board were present and participated in the hearing: Ruland J. Gill, Jr., Chair; Richard K. Borden, Michael R. Brown, Susan S. Davis, Chris D. Hansen, Carl F. Kendell, and Gordon L. Moon. Michael Johnson, Assistant Utah Attorney General represented the Board at the hearing.

The Petitioners were not present at the hearing, but were represented at the hearing by Chase Hansen, Esq. Petitioners submitted a Motion to Acknowledge Stipulated Agreement (Motion) on July 12, 2016. The Motion was submitted by Nelson Spear, who had been permitted

(without objection by Respondents) to represent the Petitioners during the investigation and negotiations of the RAAs. Respondents were represented by Daniel Sam, Esq., who did not appear at the hearing but filed a memorandum in opposition to the Petitioners' Motion on the day prior to the hearing. The Utah Division of Oil, Gas and Mining (Division) was represented at the hearing by Steve Alder, Assistant Utah Attorney General. The Division filed its Report on Investigation and Negotiations and Response to Amended Request for Agency Action (Division's Report) on July 11, 2016. Randy Thackeray, Oil and Gas Auditing Manager, and Josh Payne, Compliance Officer both testified on behalf of the Division. No persons testified on behalf of the Petitioners or Respondents.

The Board having heard testimony of the Division providing a summary of its investigations and negotiations, the response and arguments by Mr. Hansen on behalf of the Petitioners, and the argument by Mr. Alder; and having considered the Motion to Acknowledge Stipulated Agreement filed by Mr. Spears, the written Division's Report, and the Memorandum in Objection to Motion filed by Mr. Sam, unanimously ruled that: the Petitions had been fully addressed by investigation and negotiation by the Division as required by the statute; a formal hearing was not appropriate; and the Petitions were dismissed, allowing the Petitioners to proceed with other actions as may be appropriate to address the claims if they so elect.

The Board being fully advised in the premises does hereby make the following:

#### **Findings of Fact**

1. Two Requests for Agency Action (RAA) were filed by Gulf Coast Oil & Gas Company, Sun-West Oil & Gas, Sun-West Oil & Gas, Inc.; Petitioners against Craig Phillips,

individually and dba Uinta Oil & Gas, Mountain Oil Inc., and Homeland Gas & Oil, Inc., pursuant to Utah Code § 40-6-9(4) on February 29, 2016.

2. Subsequent to their filing, the Petitions were amended on April 18, 2016 without objection by Respondents or the Division to add Realeza del Spear and Trabajo del Spear, as Petitioners.

3. Both RAAs pertain to Petitioners alleged interests in the Nielson 1-20B1 Well in Section 20, Township 2S, Range 1W, Duchesne County, Utah; set forth that the Petitioners are owners of a 0.00191144 working interest in the well, and have a 0.0000244 royalty interest in the well; ask that the matter be set for investigation and negotiations pursuant to Utah Code § 40-6-9; and if the matter is not resolved ask the Board to set the matter for formal hearing before the Board.

4. Docket 131-143 alleges the Petitioners are entitled to a share of the proceeds from the sale of production from the well, and alleges that the Respondents have failed to make payments of proceeds since April 1, 1991 to the present.

5. Docket 131-144 alleges that the Petitioners have a working interest in the well and had an operating agreement with Sonat Exploration Company (Sonat), who is alleged to be the original operator of the well; that Respondents' cannot show that they have legal authority to operate the well; and Respondents are without an agreement with the Petitioners.

6. Docket 131-144 also alleges petitioners have been harmed by the failure of Respondents to provide accountings, by waste, and by overcharging for administrative fees, and as part of the relief, Petitioners ask that the Board to order the removal of Respondents as operator of the well,

or to require the Respondents to comply with the Sonat Operating Agreement, and provide an index of all working interest owners, royalty interest owners and overriding royalty interest owners. The Petition also appears to ask for payment of proceeds from past production.

7. As amended, the RAAs for each docket requested as additional relief that the Respondents be required to plug and abandon the well or in the alternative make payments in accordance with the requirements of Utah Code § 40-6-9; that the Respondents be prohibited from operating any wells in this section 20; and that the Petitioners be awarded attorney fees and travel costs associated with bringing the RAA.

8. In Response to the RAAs, Homeland Gas and Oil LTD (Homeland) stated that it was the only entity among the named Respondents with any interest in the well, and is the bonded operator of the well.

9. Homeland claims the Petitioners have never paid their share of the well's costs, had not asserted any claim in the well for 20years, and that the prior operator, Sonat, had shut-in the well and lost their lease rights as a result of non-production.

10. Homeland claimed to be reviewing the title records to determine if the Petitioners had any interest in the well.

11. Upon the recommendation of the Division, the Board at its April 28, 2016 hearing Ordered both matters referred to the Division for investigation and negotiations pursuant to Utah Code § 40-6-9 (4). Both RAAs, involve the same parties, and are disputes over past payments of proceeds from the same well. The Division has treated the two matters as one request for purposes

of its communications, investigations, and the setting of times for negotiations, and they have been combined as a single matter during the considerations by the Board.

12. On February 8, 2016, the Division sent a written request that specific information be provided to the Division by both parties by May 13, 2016; and set a date for formal face-to face negotiations on June 1, 2016.

13. Some of the requested information was provided to the Division by Petitioners, but no additional information was provided directly to the Division by Respondent.

14. The Parties continued already initiated discussions with each other by telephone and by email outside of the process proposed by the Division, although the Division was usually copied on the emails and provided copies and documents exchanged as part of email communications.

15. The parties asked that the formal negotiation meeting set for June 1, 2016 be continued without date, pending an expected agreement and the Parties ultimately declined the opportunity to have any face-to-face negotiation meeting.

16. The Parties reported that they had reached an agreement requiring Homeland to make payment of \$1,250 to Realeza del Spear “for past royalties due”, and a payment of \$1,250 to Trabajo del Spear “for all equipment etc. associated with the well bore” and for working interests.

17. The payments agreed upon were delivered by Respondents and accepted by the Petitioners.

18. The parties also agreed upon a party and method of making payments from future production, but other aspects of their dispute specifically related to reaching a formal operating

agreement for the well were not resolved, although both Parties claimed in various back and forth emails that there was or had been an agreement for a full resolution of the issues.

19. The full extent of the dispute over production including ownership of the well bore, the right of Homeland to produce the oil and gas, and the correct owners and lessees of the minerals, and other questions were explored as part of the negotiations but the Division was not able to make definitively resolution of those questions.

20. The well is currently not in production and future production, although possible, is subject to many contingencies.

21. Both parties have sent the other party emails related to these contingencies that are refer to the “agreed terms” of a final settlement, however, no “agreement” is currently acknowledged by both parties.

22. Petitioners have asked the Board to acknowledge that there is a binding agreement that includes provisions regarding future operations.

23. Respondents consider the RAA issues to be resolved and disagree as to the nature of the commitment as to future operations and production.

### **Conclusions of Law**

1. These RAAs were brought under the provisions of Utah Code § 40-6-9 (2016) which sets a mandatory method and time for making payments of proceeds from oil and gas production (§ 40-6-9(1), (2), and (3)); and establishes a process for seeking a hearing to “determine why the proceeds have not been paid” to “any person entitled to oil and gas proceeds”( § 40-6-9(4), (5) and (6)).

2. The process established by the statute requires a petition to be filed with the Board requesting a hearing, the Board to make a referral to the Division for investigations and negotiations, and then provides for the Board to decide if it will hold a hearing regarding the claims.

3. The remedies available to the Board are limited and specifically accommodate the inability to resolve certain types of disputes such as title claims and include: imposition of an accounting and a penalty if the provisions of subsection § 40-6-9(3) for timely payment or escrow have not been complied with; allowing an operator not to make payments into an escrow if specific justifications exist; and options for making a payment into interpleader (§ 40-6-9(7), (8), and (9)).

4. The statute includes no provisions that permit the Board to remove an operator, to require an index of all interest owners in a well, to condition operation of a well on a particular form of operating agreement, or to award attorney fees and travel costs to a petitioner.

5. The provisions for an accounting apply to the petitioner's interests and do not to require accounting for all persons with an interest in a well.

6. Only the determination that non-payments occurred and whether they were intentional, are proper subjects of a hearing before the Board.

7. The Board has no obligation to hold a hearing, even if the issues involve past payments, but rather has complete discretion to determine not to hold a hearing and allow the parties to pursue other remedies.

8. The purpose of the statute is in part to allow persons to expeditiously resolve certain types of disputes, such as those that do not involve questions of title or contract interpretation; it

is contrary to this purpose to proceed with a hearing on extraneous issues after an agreement on payments has been reached.

9. It is not disputed that payments were tendered and accepted as part of the settlement negotiations with the understanding and intent that the money was paid to compensate for unpaid proceeds and although future operations may not have been resolved, the payment and acceptance indicates that any disagreement over past due proceeds was resolved.

10. Since the issues that are not resolved do not involve past payments, then there is no basis for the Board to proceed with a hearing.

11. The Petitioners have other avenues for addressing the remaining issues precluding settlement including the issues related to future operations and the statute specifically provides if a matter is not set for hearing the petitioner may then seek a remedy in a court of competent jurisdiction.

12. Petitioners may attempt to resolve operator issues by filing for a pooling order under Utah Code § 40-6-6.5.

13. Petitioners are not precluded from bringing another claim to the Board for proceeds in the future under this section if problems persist.

### **Order**

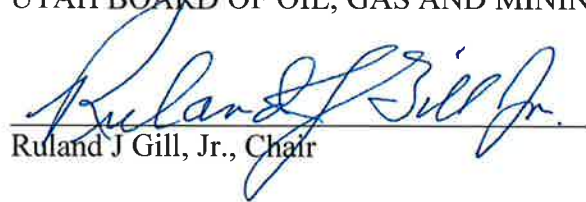
It is hereby Ordered as follows:

1. The Board elects not to proceed with a formal hearing of the Petitions;
2. The claims as set forth in the Petitions having been fully addressed by the Board to the extent required and permitted by Utah Code § 40-6-9 are hereby dismissed.



By the Board this 17th day of October, 2016.

UTAH BOARD OF OIL, GAS AND MINING

A handwritten signature in blue ink, reading "Ruland J. Gill, Jr.", is written over a horizontal line. The signature is stylized with a large initial 'R' and a prominent 'J'.

Ruland J Gill, Jr., Chair

### **CERTIFICATE OF SERVICE**

I hereby certify that on this 17th day of October, 2016, I caused a true and correct copy of the foregoing **FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER** for Docket No. 2016-007 Cause No. 131-143, and Docket No. 2016-008 Cause No. 131-144, to be mailed by Email or via First Class Mail with postage prepaid, to the following:

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